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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,071	04/18/2001	Brian Mark Shuster	70111-00028	8828
58688 7590 06/06/2007 CONNOLLY BOVE LODGE & HUTZ LLP P.O. BOX 2207 WILMINGTON, DE 19899			EXAMINER CHAMPAGNE, DONALD	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 06/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/837,071

Applicant(s)

SHUSTER, BRIAN MARK

Examiner

Donald L. Champagne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-25 and 27-36 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-6, 8-25 and 27-36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 18 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 April 2007 has been entered.

Claim Rejections - 35 USC § 102 and 35 USC § 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 16-18, 21-25, 31-33, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz et al. (US005754938A).
5. Herz et al. teaches (independent claims 1 and 21) a system and method for aggregating information, the system comprising:

a memory device (*mass storage system SS₄*, col. 56 lines 29-30);

a server (*information server S₄*, col. 56 line 30) adapted to be connected to a plurality of reception devices (*personal computers*, col. 28 line 53) and a plurality of remote information systems (*bulletin boards*, col. 56 lines 39-43 and col. 73 lines 24-32) via a wide area network (*telecommunication network N*, col. 28 line 57), whereby said plurality of remote

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information systems/*bulletin boards* are adapted to receive original message data and response message data (col. 73 lines 6-17 and 36-41) from said plurality of reception devices/*personal computers* and provide said original message data and said response message data to said plurality of reception devices/*personal computers*; and

an aggregating application connected to said memory device and said server, said aggregating application adapted to:

retrieve said original message data and response message data from said plurality of remote information systems/*bulletin boards* (col. 56 lines 39-43 and col. 73 lines 24-32), which reads on retrieval from said plurality of remote information systems/*bulletin boards*;

store said original message data and response message data in said memory device (col. 56 lines 28-30); and

organizing articles into groups (col. 7 lines 29-33) and *organizing electronic mail* (col. 56 line 43), which reads on configure said original message data and said response message data from different ones of said plurality of remote information systems to be arranged together as aggregated message and response data relating to a topic; and

provide said aggregated message and response data to said plurality of reception devices/*personal computers* (col. 55 lines 60-61).

6. Herz et al. also teaches at the citations given above claims 2, 3 and 22, claims 4 and 23, claims 5, 6, 24 and 25, and claims 17, 18, 32, and 33.
7. Herz et al. also teaches 16 and 31 (col. 55 lines 38-60), 35 (col. 17 lines 20-21) and 36 (col. 18 lines 13-23 and col. 55 lines 38-60).
8. Claims 8-15, 19, 20, 27-30 and 34 are rejected under 35 U.S.C. 103(a) as obvious over Herz et al. (US005754938A). Herz et al. does not teach (claims 8-15 and 27-30) adding advertising to messages and (claims 19, 20 and 34) users selecting by nominating. Both email advertising and selection by nomination were common, at the time of the instant invention. It is always obvious to use common practices.
9. Official notice of this common knowledge or well known in the art statement was taken in the Office action mailed 31 January 2006 (para. 7). This statement is taken to be admitted prior

art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.)

Response to Arguments

10. Applicant's arguments filed with an amendment on 27 March 2007 have been fully considered but they are not persuasive. With few exceptions discussed below, applicant at pp. 11-16 denies the rejection without offering argument or evidence to refute the rejection. This fails to comply with 37 CFR 1.111(b) because applicant's arguments amount to a general allegation that the claims define a patentable invention without distinctly and specifically pointing out the supposed errors in the examiner's action. In addition, many of applicant's arguments are moot as pertaining to deleted claim language. The arguments that comply with 37 CFR 1.111(b) are as follows.
11. Applicant argues (pp. 13-14), with respect to claims 4 and 23, that Herz does not disclose, "operating a bulleting board". There is no such limitation in claims. The claims are limited to receiving data "directly from at least one of said plurality of reception devices". The specification does not provide a "clear definition" of "reception device",¹ so the examiner is obligated to give the term it's broadest interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111 and 2111.01). Spec. p. 6 lines 2-6 indicates that a "reception device" can be most any kind of computer, so it could readily be operating a bulletin board. Since Herz et al. teaches bulletin board data (col. 73 lines 24-32), it reads on claims 4 and 23.
12. Applicant argues (p. 14, first full para) that Herz et al. does not teach providing data "to at least one of said plurality of remote information systems". The specification does not provide a "clear definition" of "reception device"¹, so the examiner must interpret this term as noted in para. 13 above. The examiner sees no clear difference between the "remote

¹ An inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" (MPEP § 2111.01.III). A "clear definition" must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as "by xxx we mean"; "xxx is defined as"; or "xxx includes, ... but does not include ...". An example does not constitute a "clear definition" beyond the scope of the example.

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information systems” and the “reception devices”. A PC operating a bulleting board could be both an RIS and a reception device, and would read on the claim.

13. Applicant argues (p. 14-15) that the rejection under 35 U.S.C. 103(a) with the taking of official notice (para. 8 above) is in error. First, this attempt to traverse after final is not seasonable (MPEP 716.01(A)). Even if the arguments were timely, they do not constitute evidence pointing out why the noticed fact is not considered to be well known in the art (MPEP 2144.03.C.).

Conclusion

14. This is a continuation of applicant's earlier application No. 09837071. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
15. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 9:30 AM to 8 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717. The fax phone number for all *formal* matters is 571-273-8300.
17. The examiner's supervisor, Eric Stamber, can be reached on 571-272-6724.

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18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
19. **AFTER FINAL PRACTICE** – Consistent with MPEP § 706.07(f) and 713.09, prosecution generally ends with the final rejection. Examiner will grant an interview after final only when applicant presents compelling evidence that “disposal or clarification for appeal may be accomplished with only nominal further consideration” (MPEP § 713.09). The burden is on applicant to demonstrate this requirement, preferably in no more than 25 words. Amendments are entered after final only when the amendments will clearly simplify issues, or put the case into condition for allowance, clearly and without additional search or more than nominal consideration.
20. Applicant may have after final arguments considered and amendments entered by filing an RCE.
21. **ABANDONMENT** – If examiner cannot by telephone verify applicant’s intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office’s web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

25 May 2007


DONALD L. CHAMPAGNE
PRIMARY EXAMINER

Donald L. Champagne
Primary Examiner
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